

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORTHWESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Northwestern Pacific Railroad, that the supervisory agent position at Ukiah, Calif., listed in the wage scale of the Telegraphers' Agreement, is subject to displacement under Rule 15 thereof and that W. C. Van Heuit's declaration to displace Supervisory Agent Pauli on that position be allowed."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"On March 29th, 1932, W. C. Van Heuit filed application to displace H. R. Pauli, Supervisory Agent at Ukiah, California. Carrier declines to permit the displacement."

An agreement between the parties bearing effective date July 16, 1927 (with changes as of May 1, 1936), was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employees were submitted as follows:

"1. This claim is predicated upon Rule 15 of the agreement in effect between the Northwestern Pacific Railroad Company and The Order of Railroad Telegraphers on March 29th, 1932:

"RULE 15

"ABOLISHED POSITIONS

"(a) When necessary to reduce the number of employees, they shall be laid off according to the seniority list taken in the inverse order.

"(b) Except as provided in paragraph (c) and (d) of this Rule, an employe losing a regular assigned position through no fault of his own may displace the junior regularly assigned employe or the junior temporarily assigned employe in any one of the following classes of positions for which he is qualified, or may go on the extra list:

"(1) Agent.

"(2) Agent-Telegrapher.

"(3) Telegrapher.

"(4) Agent-Telephoner.

"(5) Telephoner.

"(6) Towerman.

"(c) An employe displaced as Agent-Telegrapher or as Telegrapher, and an employe displaced as Agent, Agent-Telephoner or Telephoner but who is a competent Telegrapher, will not be permitted to displace Agent-Telephoners or Telephoners; and Towermen will be displaced only by Towermen.

"(d) When an employe who has been assigned to a temporary position, or to a position shown in wage scale of this Agreement as a summer office, loses his position, he will go on the extra list, retaining his seniority.

"RULE 27

"SUPERVISORY AGENCIES

"(a) Vacant positions as Supervisory Agents will be bulletined when vacancies occur; and employes on seniority list, as per Rule 13, will have right of application for same, and given preference as per seniority, providing such applicant possesses special qualifications which must govern rather than seniority, the latter, however, being given full consideration.

"(b) Supervisory Agencies, in addition to those shown in wage schedule by a star, will not be established without conference with Committee of employes.

"While Rule 27 relates only to vacancies and not to displacements, this Rule gives Carrier the right to reject any and all bids for Supervisory Agency when bulletined, it is clear under Section (b) of this Rule that seniority does not govern in any way in the filling of positions and retention of employes on positions of Supervisory Agents, also there would be no occasion for consulting with the Committee before establishing any agency as such; and this being so it naturally follows that a Supervisory Agent can not be displaced.

"The same rule appears in current Agreement between Carrier and Clerks' Organization, Rule 30, effective April 1, 1926, which is as follows:

"RULE 30

"SUPERVISORY AGENCIES

"Vacant positions as Supervisory Agents will be bulletined when vacancies occur; and employes on seniority list will have right of application for same, and given preference as per seniority, providing such applicant possesses special qualifications, which must govern rather than seniority; the latter, however, being given full consideration.

"This is further evidence that the position of Supervisory Agent is not subject to displacement; otherwise no such rule would appear in the Clerks' Agreement.

"It was understood at a conference between Carrier and General Committee The Order of Railroad Telegraphers on January 24, 1930, in the case of E. L. Ely who lost his position through no fault of his own and who undertook to displace Supervisory Agent H. R. Pauli at Ukiah, that displacement of a Supervisory Agent is not allowed; and Ely was not permitted to make this displacement.

"In Rule 27 it is provided that Supervisory Agencies will not be established without conference with Committee of employes. At conference between Carrier and General Committee, The Order of Railroad Telegraphers, on January 20, 1931, it was agreed that position of Agent-Telephoner at Scotia be discontinued and that Supervisory Agency be established instead. At this conference, in establishing the position of Supervisory Agent, it was understood between the Management and General Committee that position of Supervisory Agent is not subject to displacement."

OPINION OF BOARD.—As is evidenced by the statement of claim and the contentions of the parties, the disposition of this dispute must rest upon the interpretation placed by this Board upon the relevant provisions of the operative agreement.

The claim was expressly submitted under Rule 15 of that agreement, which deals with abolished positions and the displacement rights which accrue to those formerly holding such positions. In effect, as far as its applicability to the instant dispute is concerned, this rule provides that an employee who loses a regularly assigned position through no fault of his own may displace the junior regularly assigned employee in any one of a number of classes of positions for which he is qualified, including that of agent, and a procedure is specified for the assertion of this right of displacement. Claimant Van Heut lost his regularly assigned position without fault of his own; he was senior to Agent Pauli, the regularly assigned employee at Ukiah, whom he sought to displace; no question was raised as to his qualification for the position at Ukiah; and he observed the procedure specified in the rule for the exercise of his

right of displacement. Since by Rule 15 this right is made applicable to the position of agent without restriction, the carrier's refusal to permit the displacement can be justified only if based upon limitations contained in other rules of the agreement.

By Rule 1, defining the scope of the agreement, the current schedule is made to govern the employment and compensation of agents, except as excluded in Rule 26. The carrier's action can be supported, then, only if Rule 26 excludes the operation of Rule 15 under the circumstances of this case. In effect, as far as its bearing on the instant dispute is concerned, Rule 26, dealing with the application of the agreement, stipulates that the provisions of the agreement "relating to Hours of Service, Working Conditions, and Basis of Pay" will not be applicable "to agents whose duties are supervisory, and who do not perform routine office work," but that all other provisions will apply. If the provisions of Rule 15, dealing with abolished positions and the displacement rights resulting therefrom, cannot properly be classified as falling within any one of the three groups of provisions above specified, that rule would remain operative despite the fact that Ukiah is designated in the agreement as a supervisory agency. Much can be said both for and against the view that these displacement provisions are among those characterized in Rule 26 as provisions relating to working conditions; and the record is of no assistance in determining this issue, since it contains only the bald and conflicting assertions of the parties with respect to the matter. Even if, however, the provisions of Rule 15 were deemed to relate to working conditions, these provisions would become inapplicable only in the case of agents whose duties are supervisory and who do not perform routine office work. It is common knowledge that some supervisory agents do, and some supervisory agents do not, perform routine office work; and in this case it appears that at Ukiah, a supervisory agency, the agent does perform routine office work. Since Rule 26 expressly sets up both requirements—that the duties of the agent be supervisory, and that he do not perform routine office work—in order that the agent be not subject to the displacement provisions of Rule 15 (on the assumption, of course, that this rule deals with working conditions), it follows, under the circumstances of this case, that the position at Ukiah is subject to the displacement provisions of Rule 15, and that Claimant Van Heuit, the senior employe, is entitled to displace Agent Pauli, the junior employe, in conformity with these provisions of the agreement.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the position of supervisory agent at Ukiah is subject to displacement under Rule 15 of the agreement, and that the claimant in this dispute has properly asserted his displacement rights under the provisions of that rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1937.